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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,576	05/17/2006	Herbert Spindler	97469	5668
24628 7590 06/23/2009 Husch Blackwell Sanders, LLP Husch Blackwell Sanders LLP Welsh & Katz 120 S RIVERSIDE PLAZA 22ND FLOOR CHICAGO, IL 60606				
EXAMINER				
SMITH, JENNIFER A				
ART UNIT		PAPER NUMBER		
1793				
MAIL DATE		DELIVERY MODE		
06/23/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/579,576

**Applicant(s)**

SPINDLER ET AL.

**Examiner**

JENNIFER A. SMITH

**Art Unit**

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 April 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-18 is/are pending in the application.  
4a) Of the above claim(s) 19 and 20 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 12 is/are rejected.  
7) ☒ Claim(s) 13-18 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 17 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date 5/17/2006  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of Application***

Applicant's election with traverse in the reply filed on 04/09/2009 is acknowledged. The traversal is on the ground(s) that the method and claims are interlinked as to require that searching be conducted in identical classes and the entire application can be searched without serious burden. Applicants cite MPEP, section 803 as support for this argument. This is not found persuasive because the application is a PCT 371 case and must exhibit unity of invention under PCT Rule 13.1 and 13.2. Lack of unity has been established "a posteriori" after taking the prior art (Baker et al.) into consideration. The device disclosed in the Baker reference can be utilized in a number of different methods including fertilizer production as well as coal gasification and refinery operations and is significantly similar to the device claimed in the instant case. The requirement is still deemed proper and is therefore made FINAL.

Claims 19-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claims 1-11 remain cancelled.

Claims 12-18 are presented for examination.

***Information Disclosure Statements***

The information disclosure statement (IDS) submitted on 05/17/2006 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

The information disclosure statement filed 12/04/2006 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

***Claim Objections***

Claims 13-18 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 13-18 depend from canceled claims 1 or 5. Accordingly the claims cannot be examined.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rickard (US Patent No. 4,076,515) in view of Jonninen (US Patent No. 6,010,551).

The Rickard reference discloses a method for extracting nitrogen fertilizer from organic waste water, for sanitizing the waste and reducing emissions by thermal treatment of the waste water at a pressure below atmospheric pressure (33 to 94 KPa) and at temperatures ranging from 40 to 90°C (see Abstract, claim 1; column 3, lines 31-36; column 6, lines 35 and 36). Thickening agents are added and water is removed (see Figure 1). The emitted gas, which contains carbon dioxide and ammonia, is then cooled (see column 6, lines 2-5; column 7, line 64 to column 8, line 8), and is introduced into an

aqueous absorption agent (see column 5, lines 2-7) and the nitrogen fertilizer thus produced is removed.

The Rickard reference fails to teach feeding the excess gas back into the process.

The Jonninen reference is drawn to a method for accelerating biodegradation of organic matter. The gas that is collected from the organic matter is sent out of the stack and is collected. The collected gas is circulated through a scrubber to remove built up ammonia and particulates in the gas. The gas is cooled and a portion of the collected gas is exchanged with a portion of a replacement gas, having a higher oxygen content, to maintain the oxygen content of the gas. The cooled and re-oxygenated gas is then recirculated through the stack in a substantially closed loop system (see column 2, lines 3-26).

One of ordinary skill in the art, at the time of Applicants' invention would have been motivated to recirculate gas from the scrubbing operation back into the process in a closed loop system as described by Jonninen because this guarantees the expenditure of less energy in order to ensure the circulation of air between the desorption part and the absorber part of the process. Feeding the gas back into the process ensure precise control of the content of the components in the gas (see column

2, lines 28-34). The excess gas can be recirculated and retreated in the scrubbing process ensuring full absorption of the carbon dioxide and ammonia components.

### ***Conclusion***

Claim 12 is rejected.

Claims 13-18 are objected to.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER A. SMITH whose telephone number is (571)270-3599. The examiner can normally be reached on Monday - Friday, 9:30am to 6:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorgengo can be reached on (571)272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J.A. LORENZO/  
Supervisory Patent Examiner, Art Unit 1793

Jennifer A. Smith  
June 15, 2009  
Art Unit 1793

JS